ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

Lisa Blomgren Amsler & Tina Nabatchi, *Public Engagement and Decision-Making: Moving Minnesota Forward to Dialogue and Deliberation*, 42 WM. MITCHELL L. REV. 1629 (2016).

This article says that Minnesota has the opportunity to take a leadership role in innovating public engagement. The authors assess the legal framework for state and local collaborative governance and discusses dispute resolution and mediation in depth.

{53} COLLABORATIVE LAW – GENERAL
{87} SUBJ MATTER: GOV'T
{136} ECONOMIC ADVANTAGES OF ADR

Jon K. Amundson & Glenda M. Lux, *The Issue of Ethics and Authority for Licensed Mental Health Professionals Involved in Parenting Coordination*, 54 FAM. CT. REV. 446 (2016).

This article examines the ethics of licensed mental health professionals accepting authority in binding arbitration processes when acting as parenting coordinators. The article points out that ethical issues arise when these licensed professionals accept this authority to render binding judgments and ask clients to surrender their autonomy, even through informed consent.

{44} ARBITRATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{138} ETHICS – GENERAL

Hiro N. Aragaki, *Constructions of Arbitration's Informalism: Autonomy, Efficiency, and Justice*, 2016 J. DISP. RESOL. 141 (2016).

The article notes that because modern arbitration is controlled by contract rather than procedural rules, this form of dispute resolution delivers an inferior form of justice compared to standard adjudication

proceedings. In addressing opponents, the author states that just as arbitration increases the autonomy and efficiency relative to traditional litigation, so too is it capable of reaching equally just outcomes. The article goes on to explain that redefining the modern perception of arbitration to include a commitment to justice is essential if arbitration is to continue to be a viable alternative to litigation.

{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Omri Ben-Shahar, *The Paradox of Access Justice, and Its Application to Mandatory Arbitration*, 83 U. CHI. L. REV. 1755 (2016).

This article discusses asymmetries in access justice among low-income populations, noting that mandatory arbitration agreements reduce access to courts and the law. It identifies sources of "access handicaps," and explores the nuances of mandatory arbitration and its effects on access to justice. The first part of the article surveys various regressive access justice policies, and the second part of the article examines one example of an open access policy. The author suggests that individual litigation is does not always serve the interests of consumers, and emphasizes the importance of selecting the proper cases for litigation.

{45} ARB: MANDATORY, COURT-ANNEXED
{79} SUBJ. MATTER: CONSUMER
{124} COMPARISONS: CROSS-CULTURAL

George Bermann and Alan Scott Rau, *Gateway-Schmateway: An Exchange Between George Bermann and Alan Rau*, 43 PEPP. L. REV. 469 (2016).

This article is a transcript of a discussion held in 2015 at Pepperdine University School of Law for a symposium titled "International Arbitration and the Courts." Specifically, the discussion concerns competence in arbitration in light of Restatement Section 2.8, which

states "Unless the arbitration agreement provides otherwise, an arbitral tribunal may rule on issues relating to its own jurisdiction, including, but not limited to, the existence, validity, or scope of an international arbitration agreement."

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Jared Bishop, *Implementing Mediation into NHL Salary Negotiations for Restricted Free Agents Prior to Salary Arbitration*, 23 SPORTS LAW. J. 137 (2016).

This article argues that the National Hockey League (NHL) and the National Hockey League Players' Association (NHLPA) should amend the Collective Bargaining Agreement to create more ancillary rights for arbitration-eligible players in Standard Player Contracts. It also argues for the implementation a mandatory mediation clause prior to salary arbitration.

{44} ARBITRATION – GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{146} ORGANIZATION POLICIES & RULES

Kristen M. Blankley, *Symposium Article: The Ethics and Practice of Drafting Pre-Dispute Resolution Clauses*, 49 CREIGHTON L. REV. 743 (2016).

This article considers the lawyer's ethical obligations to advise clients on ADR procedures and proposes revising Comment 5 to Model Rule 2.1 to recommend that transactional lawyers consider counseling clients on pre-dispute ADR options in contract drafting. The article discusses the advantages of pre-dispute ADR clauses, including creativity, framing, preserving relationships, process time and cost, consistency across contracts, confidentiality, and benefits to "repeat players." It provides guidance on drafting mediation clauses, arbitration clauses and hybrid process clauses for the transactional lawyer.

{60} ADR – GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL

Francisco Blavi & Gonzalo Vial, *Class Actions in International Commercial Arbitration*, 39 FORDHAM INT'L L.J. 791 (2016).

This article attempts to contribute to the study of international class arbitrations by providing a clear framework for discussion, characterizing the current status, and evaluating potential challenges inhibiting the future development of class actions in the field of international commercial arbitration. The authors argue that the international arbitration community should implement a specific regulatory framework for class arbitrations that avoids uncertainties and addresses its special features.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{133} COURT REFORMS

Francisco Blavi & Gonzalo Vial, *The Burden of Proof in International Commercial Arbitration: Are We Allowed to Adjust the Scales?*, 39 HASTINGS INT'L & COMP. L. REV. 41 (2016).

This article discusses the ability of parties and arbitral tribunals in international commercial arbitration to change the rules concerning the burden of proof. The authors conclude parties are entitled to alter the preferred rules, subject to some limitations. Additionally, the authors noted that even though arbitrators have broad powers to determine the burden of proof, they are generally obliged to respect the agreements reached between the parties consistent with that burden. The article aims to analyze the limits of parties' authority to modify the burden of proof rules in international commercial arbitration practice, in addition to the arbitral tribunals' powers regarding the issue.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

{75} SUBJ MATTER: COMMERCIAL
{147} POWER IMBALANCE

Marc Jonas Block, *The Benefits of Alternate Dispute Resolution For International Commercial and Intellectual Property Disputes*, 44 RUTGERS L. REV. 1 (2016).

This article provides an overview of the benefits of ADR in international intellectual property and commercial disputes. It argues that ADR offers a proper medium to address the unique substantive and procedural issues of international litigation, and offers an analysis of the costs and benefits to ADR. The article identifies available forums through which international disputes can be resolved and claims that, of these forums, the WIPO Arbitration and Mediation Center has the broadest ADR resources.

{60} ADR – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{136} ECONOMIC ADVANTAGES OF ADR

Tom Bower, Note, *The Tide of the Times? A Sectoral Approach to Latin America's Resistance to the Investor-State Arbitration System,* 56 VA. J. INT'L L. 183 (2016).

This note tackles the issues surrounding the resistance of Latin American nations to implementation of investor-state arbitration systems. The author outlines the theories from leading sector analysts to develop a singular theoretical framework that explains Latin American resistance. The author ultimately supports a sector-by-sector approach to understanding the resistance to Latin America's investor-state arbitration system.

{44} ARBITRATION—GENERAL
{81} SUBJ MATTER: CORPORATE
{124} COMPARISONS: CROSS-CULTURAL

Francis Calvert Boorman, *Arbitration and Elite Honour in Elizabethan England: A Case Study of* Bess of Hardwick, 2016 J. DISP. RESOL. 19 (2016).

This article looks at the use of arbitration and mediation in resolving marriage grievances in Elizabethan high society. The author uses the conflict and ensuing arbitration between the Earl of Shrewsbury and his wife, Bess of Hardwick, to highlight the importance of contemporary notions of gender and honor in resolving a dispute. The article argues that arbitration and mediation were, and still are, preferable to traditional litigation for achieving reconciliation within a family.

{44} ARBITRATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{125} COMPARISONS: HISTORICAL

Julien Chaisse & Lisa Zhuoyue Li, *Shareholder Protection Reloaded: Redesigning the Matrix of Shareholder Claims for Reflective Loss*, 52 STAN. J INT'L L. 51 (2016).

This article addresses a situation where international arbitration tribunals and domestic courts arrive at different conclusions as to whether shareholders may be able to recover losses. International arbitration tribunals have been widely critiqued for allowing shareholders the ability to recover their losses. The authors challenge this critique and posit that these tribunals offer a better protection against conflict of interest to where their divergence from domestic courts is a better alternative.

{44} ARBITRATION – GENERAL
{106} SUBJ. MATTER: SECURITIES
{92} SUBJ. MATTER: INT'L

Laura Cicirelli, *Online Shopping: Buy One, Lose Legal Rights for Free*, 46 SETON HALL L. REV. 991 (2016).

This article looks at the enforceability of arbitration agreements between online retailers and customers. Specifically, the author discusses the world of online contracting and argues that state courts and legislatures should adopt bright line rules to maintain uniform treatment of online browse-wrap agreements. The article provides several recommendations for best practices that online retailers should follow to ensure customers have constructive knowledge of a browse-wrap agreement's terms and conditions.

{44} ARBITRATION – GENERAL
{78} SUBJ MATTER: COMPUTER
{79} SUBJ MATTER: CONSUMER

Carli N. Conklin, *A Variety of State-Level Procedures, Practices, and Policies: Arbitration in Early America*, 2016 J. DISP. RESOL. 55 (2016).

This article explores the history of arbitration in early America by analyzing the various procedures, practices and policies in three separate states. The author goes on to develop common themes that run across all states as well as other statutory developments unique to individual states. The article concludes by arguing that a clear depiction of the history of arbitration in America is essential to ensure the existence of arbitration as a dispute resolution remedy well into the future.

{44} ARBITRATION – GENERAL
{87} SUBJ MATTER: GOV'T
{125} COMPARISONS: HISTORICAL

Georgios Dimitropoulos, *Constructing the Independence of International Investment Arbitrators: Past, Present and Future*, 36 NW. J. INT'L L. & BUS. 371 (2016).

This article traces the development of increasing disqualification challenges against international arbitrators, based on an empirical study of recent International Center for Settlement of Investment Disputes decisions. The article suggests that arbitral independence in

international investment arbitration is the result of a process of communication between different arbitral actors, and even prompted by the arbitration community itself. The article proposes the creation of a certification system to address these problems.

{44} ARBITRATION – GENERAL
{92} SUBJECT MATTER: INT'L
{133} COURT REFORMS

Jieying Ding, Note, *Enforcement in International Investment and Trade Law: History, Assessment, and Proposed Solutions*, 47 GEO. J. INT'L L. 1137 (2016).

This article analyzes recent changes in international investment and trade law. It proposes solutions to escape situations of state immunity through the adoption of more judicial dispute resolution processes, rather than the current reliance on arbitration. In addition, the author discusses how to enforce arbitration awards in these international settings when an investor or state is engaged with an arbitration system.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Christopher R. Drahozal, *Innovation in Arbitration Law: The Case of Delaware*, 43 PEPP. L. REV. 493 (2016).

This article notes the limited role state courts have played in the development of international arbitration law in the United States, with the notable exception of Delaware. The author notes Delaware has become increasingly active in adopting innovative arbitration laws in both domestic and international arbitration. Part of the motivation for the innovations has been to compete in the market for international dispute resolution. The article examines the Delaware Rapid Arbitration Act (DRAA), which created a system of expedited arbitration in Delaware.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Karolina Ebel, *Is Mediation an Effective Medium to Resolve Contributory Trademark Liability Disputes in Counterfeit Luxury Goods?*, 71 DISP. RESOL. J. 137 (2016).

This article presents arguments for why disputes relating to the sale of counterfeited goods should be resolved through mediation instead of litigation. The author offers that mediation is a better mechanism to resolve disputes while maintaining customer trust and market reputation, and that mediation aids in the facilitation of an efficient e-commerce shopping experience.

{21} MEDIATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{78} SUBJ MATTER: COMPUTER
{136} ECONOMIC ADVANTAGES OF ADR

Horst Eidenmuller, *Negotiating and Mediating Brexit*, 2016 PEPP. L. REV. 39 (2016).

This article focuses on Britain's withdrawal from the European Union ("Brexit") and negotiations involved during the withdrawal process. The article deals directly with negotiation strategy, analyzing the position of the parties involved on the basis of four key negotiation factors: agreement options, non-agreement alternatives, interests, and perceptions.

{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES AND RULES

Oren Faircloth, *Mediation and End-Of-Life Futility Decisions for Newborns*, 19 QUINNIPIAC HEALTH L.J. 153 (2016).

This article focuses on futility disputes that emerge when a provider and parents disagree about the medical or ethical appropriateness of withdrawing life sustaining medical treatment. The article addresses the effectiveness of mediation, recognizing it is limited to negotiable issues with the possibility of more than one outcome.

{21} MEDIATION – GENERAL
{89} SUBJ MATTER: HOSPITALS
{138} ETHICS: GENERAL

Steven W. Feldman, Italian Colors *and Freedom of Contract Under the Federal Arbitration Act: Has the Supreme Court Enabled Disappearing Claims and the Erosion of Substantive Law?*, 2016 MICH. ST. L. REV. 109 (2016).

This article responds to a 2015 article by J. Maria Glover that discusses a fundamental shift reflected by the Supreme Court's recent arbitration decisions. The author disagrees with Glover, stating that the Court has instead, through its decisions, endorsed the major principles of freedom of contract in the arbitration context. The primary focus of the article is on the Supreme Court's Federal Arbitration Act jurisprudence, viewed through the lens of the 2013 opinion in *American Express Co. v. Italian Colors Restaurant.*

{44} ARBITRATION – GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

David Friedman, *Arbitration Revisited: Preemption of California's Unconscionability Doctrine After* Conception, 11 DUKE J. CONST. LAW & PUB. POL'Y SIDEBAR 21 (2016).

This article focuses on conflicts between state law and federal arbitration methods. The author specifically discusses *ATT Mobility LLC v. Concepcion* and *Imburgia v. DIRECTV*, two cases where the courts considered the enforceability of mandatory arbitration agreements. The author explores the legislative bases to the Supreme Court's holding in *Imburgia*, presents the arguments of both the

Petitioner and Respondent, and analyzes the Court's holding and its policy implications.

{44} ARBITRATION – GENERAL
{87} SUBJ MATTER: GOV'T
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Tracey B. Frisch, *Death by Discovery, Delay, and Disempowerment: Legal Authority for Arbitrators to Provide a Cost Effective and Expeditious Process*, 17 CARDOZO J. OF CONFLICT RESOL. 155 (2015).

This article examines why arbitrators take an active role in the arbitration process, including arbitrators being comfortable refusing to hear unnecessary evidence, denying unwarranted discovery requests, denying excessive adjournment requests, deciding an issue or disposing of a case based on a dispositive motion, or sanctioning parties for failure to comply with a discovery order or lack of good faith in the arbitration process. The article also discusses how to help arbitrators achieve this without being concerned that their award will be in danger of vacatur, and outlines judicially recognized boundaries to inform practitioners and help them step into their roles as the time and cost controllers of arbitration.

{44} ARBITRATION – GENERAL
{73} SUBJ MATTER: GENERAL
{149} QUALITY CONTROL

Farshad Ghodoosi, *Arbitrating Public Policy: Why the Buck Should Not Stop at National Courts*, 20 LEWIS & CLARK L. REV. 237 (2016).

This article attempts to debunk the idea that arbitration cannot decide matters related to public policy. This is completed by providing a theoretical discussion on the underlying desire to arbitrate and reviewing four arbitration approaches that national courts use worldwide to solve policy discussions.

{44} ARBITRATION – GENERAL

{87} SUBJ MATTER: GOV'T
{102} SUBJ MATTER: PUBLIC POLICY
{133} COURT REFORMS

Marc D. Ginsberg, *The Execution of an Arbitration Provision as a Condition Precedent to Medical Treatment: Legally Enforceable? Medically Ethical?*, 42 WM. MITCHELL L. REV. 273 (2016).

Some states provide that patients may elect to take a medical malpractice case to arbitration, rather than through the traditional litigation process. However, some doctors condition treatment upon a patient's execution of an arbitration agreement. This article discusses whether such an arbitration agreement is both legally enforceable as well as medically ethical.

{44} ARBITRATION – GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{127} REQUIREMENTS: MANDATE TO USE

Chiara Giorgetti, *Between Legitimacy and Control: Challenges and Recusals of Judges and Arbitrators in International Courts and Tribunals*, 49 GEO. WASH. INT'L L. R. 205 (2016).

This article focuses on international courts and tribunal rules for challenging judges and arbitrators, and for recusal of judges and arbitrators. The author analyzes the number of challenges against decision-makers and the success rate of those challenges. The author ultimately suggests ways to strengthen current challenge and recusal rules for judges and arbitrators in international courts and tribunals.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES AND RULES

Thalia Gonzalez, *A Quiet Revolution: Mindfulness, Rebellious Lawyering, and Community Practice*, 53 CAL. W. L. REV. 49-84 (2016).

This article considers the movement toward mindfulness and the individual in the context of experiential learning as well as clinical legal practice and education. It proposes that the integration of contemplative practices promotes more ethical conduct, more empathic judgment, social justice, and engenders altruism, which in turn more effectively uses the law in service both to clients and the community.

{60} ADR – GENERAL
{77} SUBJ MATTER: COMMUNITY
{155} TEACHING

M. Eve Hanan, *Decriminalizing Violence: A Critique of Restorative Justice and Proposal For Diversionary Mediation*, 46 N.M.L. REV. 123 (2016).

This article explores the feasibility and desirability of resolving crimes of violence outside of the criminal justice system, examines restorative justice's therapeutic agenda and claim that it is separate from the criminal justice system, and proposes a neutral, diversionary form of mediation to serve as an alternative to traditional restorative justice. The article addresses potential criticisms of this proposed mediation model in cases of serious crime and domestic violence. It emphasizes the success of restorative justice in resolving some criminal matters outside of court, and argues that a neutral, diversionary form of mediation would allow more cases to be resolved outside the courtroom.

{21} MEDIATION – GENERAL
{82} SUBJ MATTER: CRIMINAL
{133} COURT REFORMS

Jennifer Hendry and Melissa L. Tatum, *Human Rights, Indigenous Peoples, and the Pursuit of Justice*, 34 YALE L. & POL'Y REV. 351 (2016).

This article analyzes and discusses three major problems with the use of the rights-based approach to tackle issues of Indigenous justice, and

argues that such an approach privileges the worldview of the dominant legal culture, artificially restricts the conversation about the causes of and solutions to problems involving such justice, and masks the inherent tension between human rights and legal pluralism. The article examines what is meant by a "rights-based approach," then examines six U.S. cases representative of that approach and finally builds on legal pluralism to present possible solutions to the problems produced by a rights-based approach to Indigenous justice.

{53} COLLABORATIVE LAW – GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{133} COURT REFORMS

David Horton & Andrea Cann Chandrasekher, *Employment Arbitration After the Revolution*, 65 DEPAUL L. REV. 457 (2016).

This article examines employment arbitration filings, finding that few employees bother to arbitrate low-value complaints. The authors' emphasize that *Conception* has changed the environment in the arbitral forum, with plaintiffs pursuing more individual arbitrations against large companies instead of large class actions. The article then considers arbitral awards with logit regressions, finding employees "win" 18% of matters. The authors conclude that employees are less likely to be victorious when they face a "high-level" or "super" repeat-playing employer.

{44} ARBITRATION – GENERAL
{96) SUBJ MATTER: EMPLOYMENT (NON-UNION)
{127} REQUIREMENTS: MANDATE TO USE

Michele Hoyman et al., *The Role of Apologies in Labor Arbitration Outcomes*, 40 S. ILL. U. L. J. 171 (2016).

This article defines and discusses "apologies" in the context of courts and arbitration of collective bargaining agreements. The article presents data related to arbitration decisions and apologies. The data presented suggests that sincere apologies result in higher success rates,

but that timing of the apology creates no substantial difference in the change of success.

{44} ARBITRATION – GENERAL
{96} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Amanda R. James, *Because Arbitration Can Be Beneficial, It Should Never Have to Be Mandatory: Making A Case Against Compelled Arbitration Based Upon Pre-Dispute Agreements to Arbitrate in Consumer and Employee Adhesion Contracts*, 62 LOY. L. REV. 531 (2016).

This article argues that because arbitration without voluntary consent often results in an unfair process, mandatory pre-dispute arbitration clauses in consumer and employee adhesion contracts are inherently inequitable. The author recommends either invalidating mandatory pre-dispute arbitration clauses in consumer and employee adhesion contracts altogether, or requiring any such clause to include a provision allowing the consumer or employee to choose the arbitration provider and processes.

{45} ARB: MANDATORY, COURT-ANNEXED
{79} SUBJ MATTER: CONSUMER
{93} SUBJ MATTER: LABOR – GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Margot Kaminski, *When the Default Is No Penalty: Negotiating Privacy at the NTIA*, 93 DENV. U.L. REV. 925 (2016).

In the absence of an omnibus federal privacy law in the United States, privacy for consumer protection is largely within the purview of the Federal Trade Commission.
Recently, however, the National Telecommunications and Information Administration (NTIA) at the Department of Commerce has been used to co-regulate privacy law, and has hosted multistakeholder negotiations on consumer privacy issues. This article argues that this regulatory scheme is ineffective—unless the government establishes a

penalty default that is worse than enforcement of best practices, private actors will not
co-regulate in the desired way.

{53} COLLABORATIVE LAW – GENERAL
{87} SUBJ MATTER: GOV'T
{104} SUBJ MATTER: REGULATORY
{132} CONFIDENTIALITY

Julian G. Ku, *Why Ratification of the U.N. Convention of the Law of the Sea May Violate Article III of the U.S. Constitution*, 25 MINN. J. INT'L L. 1 (2016).

This essay discusses the United States and the United Nations Convention on the Law of the SEA (UNCLOS). Although scholars have debated for and against ratification on policy issues, a major, undiscussed issue is the mandatory dispute resolution system required under UNCLOS. This mandatory method of dispute resolution has a serious possibility of conflicting with U.S. constitutional law. Further, the essay details the relationship between UNCLOS and dispute settlement, including topics such as mediation and arbitration.

{60} ADR – GENERAL
{87} SUBJ MATTER: GOV'T
{92} SUBJ MATTER: INT'L
{128} REQUIREMENTS: MANDATE TO USE

Calvin Lee, Note, *May Mediators Draft Settlement Agreements?*, 54 FAM. CT. REV. 501 (2016).

This article discusses whether a mediator-lawyer can draft a settlement agreement at the conclusion of mediation. The author includes a survey of various state laws addressing this issue. It looks at traditional boundaries between lawyer and mediator, and concludes with a recommendation on how the state of California should approach this issue.

{21} MEDIATION – GENERAL

{73} SUBJ MATTER: GENERAL
{114} 3D PARTY: PRACTICE OF LAW

Joshua S.E. Lee & Jaimie K. McFarlin, *Sports Scandals from the Top-Down: Comparative Analysis of Management, Owner, and Athletic Discipline in the NFL & NBA*, 23 JEFFREY S. MOORAD SPORTS L.J. 69 (2016).

This article reviews two American professional sports leagues and their disputes over discipline and scandals that arise in the employment setting of the sports team and their players. The article discusses the use of a neutral arbitrator and the legitimacy of its use in discipline disputes in professional sports.

{44} ARBITRATION – GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{146} ORGANIZATION POLICIES & RULES

Kendra Leite, Comment, *The Fair and Equitable Treatment Standard: A Search for a Better Balance in International Investment Agreements*, 32 AM. U. INT'L L. REV. 363 (2016).

This article analyzes international investment agreements (IIA) in length and their relationship to international arbitration tribunals. It discusses how foreign investors can go to arbitration with States that breach these agreements. Also, it discusses how the parties' interests can be balanced to create a better resolution to the disputes.

{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L
{147} POWER IMBALANCE

Mariah Levison, *Resolving Divisive Social Issues: A Case Study of the Minnesota Child Custody Dialogue*, 42 WM. MITCHELL L. REV. 1682 (2016).

This article discusses the field of dispute resolution, including the contradictory trends of polarization and collaboration. In the context of the Minnesota Child Custody Dialogue, the article discusses the possibility of resolving polarizing issues by way of collaborative problem solving.

{60} ADR – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{87} SUBJ MATTER: GOV'T
{134} DISPUTE PREVENTION

Laurie A. Lewis, *Law Student Mediators Wear a Triple Crown: Skilled, Sellable, & Successful*, 50 U.S.F. L. REV. 165 (2016).

This article speaks on the topic of education, specifically on legal education dealing with ADR generally and mediation specifically. The article looks at a brief history of the modern ADR movement, the proliferation of mediation clinics in law school teaching, and community mediation training. Finally, it proposes that law students who obtain training and work as mediators while still in law school gain a competitive edge in seeking mediation jobs.

{21} MEDIATION – GENERAL
{83} SUBJ MATTER: EDUCATION
{155} TEACHING

Joe E. Ling, *Transgressions of a Timid Judiciary: Our Highest Court's Refusal to Overturn* Abood v. Board of Education - Harris v. Quinn, 42 WM. MITCHELL L. REV. 1237 (2016).

This article discusses the U.S. Supreme Court's decision in *Harris v. Quinn*, which refused to apply the landmark public-sector union case *Abood v. Detroit Board of Education* to non-unionized in-home personal care assistants. In assessing the decision, the article analyzes collective bargaining at length and asserts that not only was *Harris v. Quinn* wrongly decided, but that *Abood* should be reversed.

{60} ADR – GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{125} COMPARISONS: HISTORICAL

Benjamin Lowndes & Sharon Press, *Ally-Ship and Dispute Resolution Practitioners: A Continuum*, 42 WM. MITCHELL L. REV. 1572 (2016).

This article discusses to what extent conflict resolution practitioners can serve as allies to specific social justice movements. Through ADR processes such as mediation, disputants can overcome barriers such as access to justice, trust in traditional systems of dispute resolution, and systems of structural oppression. Conflict resolution practitioners can serve as allies and press today's community issues.

{60} ADR – GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{77} SUBJ MATTER: COMMUNITY
{151} ORGANIZATION POLICIES & RULES

Thomas Luchs, *Is Your Client a Good Candidate for Mediation? Screen Early, Screen Often, and Screen for Domestic Violence*, 28 J. AM. ACAD. MATRIMONIAL L. 455 (2016).

This article analyzes policies that support mandatory mediation in family law disputes. The author highlights the importance of compelled mediation in domestic disputes and child custody disputes, and then analyzes various state laws regarding mediation and domestic violence. The article ends with a brief discussion of e-mediation in resolving cases with domestic violence, and predicts the day when all domestic disputes are referred to mediation, with only a few exceptions.

{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{127} REQUIREMENTS: MANDATE TO USE

Amy Mathieu, Note, *Nursing Homes and Mandatory Arbitration Clauses*, 34 J.L. & COM. 355 (2016).

This note reviews nursing home contracts and the problems stemming from mandatory arbitration clauses. It reviews the unequal bargaining power between nursing home residents and care providers, and proposes congressional action to solve the issue.

{45} ARB: MANDATORY, COURT-ANNEXED
{89} SUBJ MATTER: HOSPITALS
{147} POWER IMBALANCE

Adam J. MacLeod, *Tempering Civil Rights Conflicts: Common Law for the Moral Marketplace*, 2016 MICH. ST. L. REV. 643 (2016).

This article discusses conflicts between conscience and sexual identity as they pertain to property rights: the same-sex couple buying a cake from a conscientious business owner or the adulterous employee and their conscientious employer, to name a few. Although both sides claim that their civil rights are being infringed, traditional litigation is not the best answer. As part of its analysis, the article discusses topics such as conflict and mediation in the marketplace, attempts at mediation, the mediated dominions of common law, and the mediated dominion in public accommodations.

{21} MEDIATION – GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{136} ECONOMIC ADVANTAGES OF ADR

Martin H. Malin, *The Three Phases of the Supreme Court's Arbitration Jurisprudence: Empowering the Already-Empowered*, 17 NEV. L.J. 23 (2016).

This article discusses the evolution of the Supreme Court's arbitration jurisprudence. It demonstrates that the latest phase of the Court's arbitration jurisprudence is obliterating state contract-law doctrines that policed overreaching by dominant parties, elevating the interests

of the parties imposing the terms, and enshrining the imposing party's interests in the FAA and the Supremacy Clause of the Constitution. This article explains how the court arrived at its current 4-4 split on most arbitration issues, and notes that Justice Scalia's successor could tip the balance.

{44} ARBITRATION – GENERAL
{87} SUBJ MATTER: GOV'T
{125} COMPARISONS: HISTORICAL

McKenzee D. McCammack, *PAGA is the New Qui Tam: Changing the Landscape of Employment Law in California*, 43 W. ST. U. L. REV. 199 (2016).

The author discusses recent changes in California employment law after the state legislature's approval of the Private Attorney General Act of 2004 (PAGA). Under this law, employers seek to include arbitration clauses because of arbitration's efficiency. This article then discusses federal and California court responses to these arguments regarding arbitration clauses under PAGA.

{45} ARB: MANDATORY, COURT-ANNEXED – GENERAL
{96} SUBJ. MATTER: EMPLOYMENT (NON-UNION)
{136} ECONOMIC ADVANTAGES OF ADR

Mary Miller, Note, *More Than Just a Potted Plant: A Court's Authority to Review Deferred Prosecution Agreements Under the Speedy Trial Act and Under Its Inherent Supervisory Power*, 115 MICH. L. REV. 135 (2016).

This note discusses judicial review of non-prosecution agreements and deferred prosecution agreements for corporate criminal cases, arguing that such judicial review is both appropriate and constitutionally permissible. The note discusses the negotiation of deferred prosecution agreements under the Speedy Trial Act.

{1} NEGOTIATION – GENERAL
{81} SUBJ MATTER: CORPORATE

{82} SUBJ MATTER: CRIMINAL
{121} SETTLEMENT: AUTHORITY

Andrew Myburgh, *Does International Commercial Arbitration Promote Foreign Direct Investment?*, 59 J. LAW & ECON. 597 (2016).

This article explores the role that international commercial arbitration plays in facilitating foreign direct investment (FDI) and develops a model to explain the use and effect of resolving international disputes through arbitration. Using empirical testing in a gravity framework, the results suggest that access to arbitration leads to an increase in FDI flows, with a greater effect in countries with wealthier institutions and for larger projects.

{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{136} ECONOMIC ADVANTAGES OF ADR

Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 WASH. U. L. REV 919 (2016).

This article notes that since the Sandy Hook Massacre in 2011, there has been a call by school administrators and policy makers alike to increase police presence in primary and secondary schools. Through an empirical analysis, the author concludes that a police officer's presence in a school increases the odds that students will be charged with various low-level offenses. The author argues that restorative justice is a more effective means of reducing school violence, rather than criminal prosecution.

{53} COLLABORATIVE LAW – GENERAL
{82} SUBJ MATTER: CRIMINAL
{83} SUBJ MATTER: EDUCATION
{146} ORGANIZATION POLICIES & RULES

Lydia Nussbaum, *Mediation as Regulation: Expanding State Governance Over Private Disputes*, 2016 UTAH L. REV. 361 (2016).

This article looks at how state legislatures have used mediation as a regulatory tool. Recently, state legislatures have implemented mediation mandates that govern how private parties resolve their disputes. Legislatures have taken control of formalizing mediation processes rather than leaving those decisions to the administrative courts. This note argues that statutory mediation mandates should be viewed as decentralized governance that changes the relationship between public and private powers.

{21} MEDIATION – GENERAL
{87} SUBJ MATTER: GOV'T
{104} SUBJ MATTER: REGULATORY
{128} REQUIREMENTS: STATUTORY OR RULES

James Oldham, *The Historically Shifting Sands of Reasons to Arbitrate*, 2016 J. DISP. RESOL. 41 (2016).

This article looks at how arbitration was practiced in 18th Century England, tracing the English approach to the American colonies and the beginning of the Republic. In doing so, this paper argues that several attributes of arbitration (speed, economy, informality, and finality) combined with modern pre-trial discovery practices, continue to make arbitration an effective form of binding dispute resolution in the 21st century.

{44} ARBITRATION – GENERAL
{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL

Matthew J. Pallay, *The Right of Direct Action: Issues Proceeding Directly Against Marine Insurers*, 41 TUL. MAR. L.J. 57 (2016).

This article discusses, in part, the interaction of the Federal Arbitration Act with direct action statutes and suits involving arbitration clauses. It explains that federal arbitration laws determine the nature and scope of a direct action suit.

{44} ARBITRATION – GENERAL
{87} SUBJ MATTER: GOV'T
{128} REQUIREMENTS: STATUTORY OR RULES

F. Peter Phillips, *Ancient and Comely Order: The Use and Disuse of Arbitration by New York Quakers*, 2016 J. DISP. RESOL. 81

This article takes an in-depth look at scripturally-based arbitration utilized by the Quakers during the 17th century, then compares it to modern-day mercantile arbitration. The author notes that in both cases, parties apply community standards of conduct rather than legal codes in order resolve controversies. Ultimately, the article argues that without mutual accountability and acknowledgment of community values, arbitration constitutes a mere alternative to common litigation.

{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{125} COMPARISONS: HISTORICAL

Allen Ponak & Daphe Taras, *Rule of Law and the Arbitration Council of Cambodia*, 20 EMPL. RTS. & EMPLOY. POL'Y J. 37 (2016).

This article examines the Arbitration Council of Cambodia and its development since 2003. Data presented in the article suggests the ACC has been very successful in creating a venue for rule of law in a country that lacks other institutions for justice. The ACC also exhibits characteristics of North American labor arbitration systems, including providing disputants with a low-cost, efficiency, and neutrality. However, the article suggests that the ACC may continue to face issues including labor relations, economic competition from other countries, and a weak rule of law in Cambodia.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{93} SUBJ MATTER: LABOR – GENERAL

Emily S. Taylor Poppe and Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881, (2016).

This article explores attacks on the legal profession; specifically recent research suggesting legal representation does not benefit clients. The article reviews the existing empirical research on the effect of legal representation on civil dispute outcomes. The article summarizes the findings of empirical research on the effect of legal representation in nine areas: juvenile cases, housing cases, administrative hearings, family law disputes, employment law litigation and arbitration, small claims, tax cases, bankruptcy filings, and tort claims. The article also discusses the role mediation plays in those areas.

{60} ADR – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{108} SUBJ MATTER: TAX
{151} ROLE OF LAWYERS

Arturo C. Porzecanski, *The Origins of Argentina's Litigation and Arbitration Saga, 2002-2016*, 40 FORDHAM INT'L L.J. 41 (2016).

This article covers the arbitration and litigation saga involving the Republic of Argentina from 2002 to 2016 that set several important legal and arbitral precedents. Specifically, the author focuses on three cases, which made their way up to the U.S. Supreme Court and were settled in 2014. The author argues that the mass filing of arbitration claims was prompted by Argentina's radical changes to the rules affecting foreign strategic investors, which differed from prior commitments that the Argentine government had made in multiple bilateral investment treaties.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES
{146} ORGANIZATION POLICIES OR RULES

Susan Raines, Yeju Choi, Joshua Johnson & Katrina Coker, *Safety, Satisfaction, and Settlement in Domestic Relations Mediations: New Findings*, 54 FAM. CT. REV. 603 (2016).

This article addresses the realities of whether it is effective and appropriate to use mediation as a dispute resolution method for divorce and/or family law cases when dealing with cases of intimate partner violence. The authors use survey data to conclude that, among other factors, parties involving abuse and violence had a reduced settlement rate when utilizing mediation as the dispute resolution method.

{21} MEDIATION – GENERAL
{85} SUBJ. MATTER: FAMILY (DOMESTIC REL.)
{123} SETTLEMENT: PRESSURES TO SETTLE

Alan Scott Rau and Andrea K. Bjorklund, BG Group *and "Conditions" to Arbitral Jurisdiction*, 43 PEPP. L. REV. 577, (2016).

The authors discuss their different interpretations of the proper way to interpret the condition precedent in the investment treaty in *BG Group*. The paper presents two sensible ways to approach treaty interpretation. The article concludes by noting the inevitability that different tribunals whose members have different backgrounds will approach the process of interpretation in different ways and will likely reach different conclusions even with regard to the same treaty.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Alexander W. Resar, *The Evolution of Investor-State Arbitration in the Trans-Pacific Partnership Agreement*, 34 BERKELEY J. INT'L L. 159 (2016).

This article discusses the Trans-Pacific Partnership and one of the most significant criticisms of the agreement: the investor-state arbitration mechanism. This mechanism has been retained in the

Trans-Pacific Partnership's (TPP) investment chapter from the North American Free Trade Agreement (NAFTA), the Dominican Republic-Central American Free Trade Agreement (CAFTA) and many of the United States' bilateral investment treaties (BITs). The article argues the TPP continues the largely responsive evolution in international investment treaties and agreements by examining the TPP's departures from the U.S.'s most recent investment treaties and agreements in light of the arbitral decision driving the changes.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{75} SUBJ MATTER: COMMERCIAL
{127} REQUIREMENTS: MANDATE TO USE

Niall Mackay Roberts, Note, *Definitional Avoidance: Arbitration's Common-Law Meaning and the Federal Arbitration Act*, 49 U.C. DAVIS L. REV. 1547 (2016).

This article addresses the rising change in increased federal regulation of arbitration and how this increased federal role requires a definition of arbitration to establish the boundaries of federal involvement under the Federal Arbitration Act. The author suggests the definition should be consensual, binding, and neutral. The author then discusses the definition's possible repercussions.

{44} ARBITRATION – GENERAL
{102} SUBJ. MATTER: PUBLIC POLICY
{125} COMPARISONS—HISTORICAL

Jason Rothod & Sandeep Vaheesan, *The Arc and Architecture of Private Enforcement Regimes in the United States and Europe: A View Across the Atlantic*, 14 U.N.H. L. REV. 303 (2016).

This article looks at private enforcement regimes in Europe and the United States through a cross-cultural comparative analysis. The author notes that while European and American enforcement regimes appear to be on the same trajectory, there are several crucial differences. The article explains that while the U.S. Supreme Court's

interpretation of the Federal Arbitration Act substantially benefits American businesses, their European counterparts face far fewer obstacles in obtaining dismissal of anti-trust litigation.

{60} ADR – GENERAL
{74} SUBJ MATTER: ANTITRUST
{124} COMPARISONS: CROSSCULTURAL

Ebony L. Ruhland, Alisha M. Hardman, Emily H. Becher & Mary S. Marczak, *Co-Parent Court: A Problem-Solving, Community-Based Model for Serving Low-Income Unmarried Co-Parents*, 54 FAM. CT. REV. 336 (2016).

This article describes an innovative demonstration project that worked in a study of low-income unmarried co-parents. It suggests that the lessons learned through the implementation of the 3-year demonstration project should serve as suggestions for courts interested in implementing a similar model.

{60} ADR – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{133} COURT REFORMS

Victoria Shannon Sahani, *Judging Third-Party Funding*, 63 UCLA L. REV. 388 (2016).

This article addresses the controversy surrounding third-party funded litigation and arbitration. The author proposes new interpretations of procedural rules that will allow judges and arbitrators to be able to determine the relevance of third-party funding and better understand the way third-party funding impacts a dispute. This solution will also allow for the long-term study of third-party funding to allow procedural rules to adapt to trends.

{44} ARBITRATION – GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{137} EFFECT OF PROCESS ON NONPARTICIPATORY PARTIES

Michael Saini et al., *Understanding Pathways to Family Dispute Resolution and Justice Reforms: Ontario Court File Analysis & Survey of Professionals*, 54 FAM. CT. REV. 382 (2016).

This article presents two studies: a survey of family court professionals and an analysis of closed court files of family cases involving children, both addressing different pathways to resolution of family disputes in Ontario. It points out that the majority of these cases are resolved through mediation, yet there remain significant gaps in the implementation of these strategies. The authors suggest further research, including a longitudinal survey of the experiences of families involved in various resolution pathways.

{21} MEDIATION – GENERAL
{85} SUBJ: FAMILY (DOMESTIC REL.)
{133} COURT REFORMS

Jan K. Schaefer, *Court Assistance in Arbitration – Some Observations on the Critical Stand-by Function of the Courts*, 43 PEPP. L. REV. 521, (2016).

The article addresses three questions. First, why is court involvement required in arbitration at all? The article answers this question by referencing three main differences between the juridical powers of arbitrators and judges. Second, whom do the courts actually support? The article explores the different ways courts can support parties, arbitrators, and the arbitral process. Third, when do the courts grant assistance? The article discusses how under arbitration law, the role of courts is usually defined, but nevertheless, it is ultimately the judges' interpretation of the law that ensures an arbitration-friendly environment.

{45} ARB: MANDATORY, COURT-ANNEXED
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

Savannah P. Schaefer, *Save Our Sandbox: A Prospective Approach to Big Player Participation in the Unlicensed Spectrum Space*, 15 J. ON TELECOMM. & HIGH TECH. L. 233 (2016).

This article examines the extent to which increased participation in the unlicensed spectrum bands, particularly by large and licensed incumbent players, may hamper the kinds of innovation that unlicensed allocation purports to serve. It explains negotiation tactics in these situations and examines how to preserve low capital costs, low barriers to entry, and space for a diverse group of innovators as commercial competition for a limited resource increases. This article ultimately argues that the Federal Communications Commission has important public interest reasons for allocating unlicensed spectrum bands and should adopt a proactive approach to maintain the unlicensed bands as a space for fast, free innovation.

{1} NEGOTIATION – GENERAL
{104} SUBJ MATTER: REGULATORY
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{134} DISPUTE PREVENTION

Maxi Scherer, *Effects of International Judgments Relating to Awards*, 43 PEPP. L. REV. 637 (2016).

The article examines judgments relating to international arbitral awards and their extraterritorial effects, specifically if an award judgment rendered in one jurisdiction has effects in other jurisdictions. The article examines a few recent decisions: *Malicorp Ltd. v. Government of the Arab Republic of Egypt*, and *Astro Nusantara International BV v. PT Ayunda Prima Mitra* and places the decisions in a broader context, discussing whether and to what extent award judgments should have extraterritorial effects.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Anthony J. Sebok, *The Unwritten Federal Arbitration Act,* 65 DEPAUL L. REV. 687 (2016).

This article examines the roots of arbitration including an extensive history of the Federal Arbitration Act (FAA), and concludes that these roots are worth recalling in an era in which the U.S. Supreme Court has protected arbitration from erosion, despite a few wrong turns in its interpretation of the scope of the FAA. The authors suggest that there is room within the FAA for states to combat the suppression of arbitration by demanding that some contracts be "pro-arbitration" by prohibiting assignment and consolidation waivers.

{44} ARBITRATION – GENERAL
{87} SUBJ MATTER: GOV'T
{125} COMPARISONS: HISTORICAL

Brenna A. Sheffield, Note, *Pre-Dispute Mandatory Arbitration Clauses in Consumer Financial Products: The CFPB's Proposed Regulation and its Consistency with the Arbitration Study*, 20 N.C. BANKING INST. 219 (2016).

This article discusses pre-dispute arbitration clauses in the context of consumer contracts. The author explores the Consumer Financial Protection Bureau's (CFPB) Arbitration Study, as mandated by the Dodd-Frank Act. This article examines the portion of the study concerning regulations on pre-dispute arbitration clauses. The author ultimately argues for and against certain CFPB regulations.

{44} ARBITRATION – GENERAL
{79} SUBJ MATTER: CONSUMER
{87} SUBJ MATTER: GOV'T
{127} REQUIREMENTS: MANDATE TO USE

Donna Shestowsky, *How Litigants Evaluate the Characteristics of Legal Procedures: A Multi-Court Empirical Study*, 49 U.C. DAVIS L. REV. 793 (2016).

The article presents findings from the first field study from many courts, examining how civil litigants evaluate the characteristics of different legal procedures in terms of control – i.e. whether those characteristics granted relative control to litigants themselves or to third parties like mediators or judges – after their cases are filed in court. Litigants preferred third-party control to litigant control and wanted third parties to control the process more so than control the outcome. Multiple factors, such as gender, age group, and case-type, played a crucial role in predicting attraction to third party control.

{60} ADR – GENERAL
{73} SUBJ MATTER: GENERAL
{147} POWER IMBALANCE

Annie Smith, *Imposing Justice: The Prospect of Mandatory Arbitration for Guestworkers*, 40 N.Y.U. REV. L. & SOC. CHANGE 375 (2016).

This article predicts that converging trends in employment practices and dispute resolution processes will create a growing underclass of guest workers and undermine workplace standards for all workers. The author argues that mandatory arbitration applied to guest workers would be harmful, as they represent a group of workers to whom the government should give protection. Mandatory arbitration would magnify guest workers' vulnerability and negatively impact their working conditions.

{45} ARB: MANDATORY, COURT-ANNEXED – GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{147} POWER IMBALANCE

Stephen Wakefield Smith, *ASEAN, China, and the South China Sea: Between a Rock and a Low-Tide Elevation*, 29. U.S.F. MAR. L.J. 29 (2016).

This article highlights China's recent assertiveness in the South China Sea, specifically its disputes with Vietnam, the Philippines, Malaysia, and Brunei over features in the Spratly Islands and surrounding

waters. China also has a dispute with Vietnam over the Paracel Islands, and a dispute with the Philippines over the Scarborough Shoal. The article discusses how the Association of Southeast Asian Nations (ASEAN) must confront China to settle the status of the maritime features at issue, noting bilateral negotiations unfairly benefit China and undermine ASEAN's role in the regional affair. The article also explores China's insistence on bilateral negotiations.

{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L
{104} SUBJ MATTER: REGULATORY
{146} ORGANIZATION POLICIES & RULES

Abby Cohen Smutny, Anne D. Smith, & McCoy Pitt, *Enforcement of ICSID Convention Arbitral Awards in U.S. Courts*, 43 PEPP. L. REV. 649 (2016).

This article discusses the International Centre for Settlement of Disputes (ICSID), which is an organization that administers arbitrations and conciliations between parties to the ICSID Convention and foreign investors. It specifically addresses ambiguity with regard to the enforcement of ICSID awards in U.S. courts and asks how such an award might be treated as a final state court judgment enforceable in federal court.

{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

S.I. Strong, *Realizing Rationality: Empirical Assessment of International Commercial Mediation*, 73 WASH & LEE L. REV. 1973 (2016).

Through an empirical study, this article analyzes the U.S. Government's proposal to the United Nations Commission on

International Trade law, which seeks an international treaty concerning the enforcement of settlements reached during international commercial mediation. The author outlines the methodology behind the study, explaining the study's various constructs, substantive issues, and results.

{21} MEDIATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Sean P. Sullivan, *Why Wait to Settle? An Experimental Test of the Asymmetric-Information Hypothesis*, 59 J. LAW & ECON. 497 (2016).

This article examines the uncertain causes of delays in civil litigation settlement. The author describes an economic experiment designed to test whether asymmetric information might be a contributing cause of delay. The data provides evidence that asymmetric information can delay settlements as much as 90 percent in some treatments. This causal relationship is robustly observed across different bargaining environments. However, the article also suggests that asymmetric information may be only one of several contributing causes because the results do not obviously confirm all aspects of the game-theoretic explanation.

{60} ADR – GENERAL
{73} SUBJ MATTER: GENERAL
{123} SETTLEMENT: PRESSURES TO SETTLE

Symeon C. Symeonides, *Choice of Law in the American Courts in 2015: Twenty-Ninth Annual Survey* +, 64 AM. J. COMP. L. 221 (2016).

This article is a nation-wide survey of choice of law provisions in the United States. Part of the study focuses on collecting and analyzing data surrounding arbitration clauses. The article discusses the United States Supreme Court's recent decision in *DirecTV, Inc. v. Imburgia* and provides an update on recent state court changes.

{44} ARBITRATION – GENERAL
{79} SUBJ. MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Imre Stephen Szalai, *Exploring the Federal Arbitration Act Through the Lens of History*, 2016 J. DISP. RESOL. 115 (2016).

Because there is relatively little legislative history pertaining to the Federal Arbitration Act (FAA), this article takes a broader look at the history and context surrounding the legislation's enactment. Through this wide lens, the article explains that the historical context of the act sheds light on past and present arbitration practices in this country. The article goes on to argue that the Supreme Court has grossly erred in its interpretation of the FAA.

{44} ARBITRATION – GENERAL
{87} SUBJ MATTER: GOV'T
{144} LEGISLATION

Margo Todd, *For Eschewing the Trouble and Exorbitant Expense: Arbitration in the Early Modern British Isles*, 2016 J. DISP. RESOL. 7 (2016).

This article looks at the history of binding arbitration in the British Isles during the 16th and 17th centuries. The author notes that early forms of arbitration possessed several advantages compared to traditional litigation; in that arbitration was cheaper, faster, and better able to foster desirable outcomes. The article concludes by explaining the surprising revelation that during this period, the usual practice was to move to arbitration only *after* cases had first been initiated in the courts.

{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Peter Tzeng. *Sovereignty over Crimea: A Case for State-to-State Investment Arbitration*, 41 YALE J. INT'L L. 459 (2016).

This article examines the pending investor-state arbitrations against Russia, explaining why the legitimacy of the tribunals' determinations should be questioned. Ultimately, this article proposes that Ukraine institute state-to-state investment arbitration proceedings against Russia, under the state-to-state dispute settlement provision of the Russia-Ukraine bilateral investment treaty. Doing so would give Ukraine a seat at the table and provide the tribunal jurisdiction to determine whether Ukraine constitutes Russian or Ukrainian territory.

{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L
{147} POWER IMBALANCE

Rene Uruena, *Subsidiarity in Global Governance: Subsidiarity and the Public-Private Distinction in Investment Treaty Arbitration,* 79 LAW & CONTEMP. PROB. 99 (2016).

This article explores investment treaty arbitration, a form of international dispute settlement. It specifically explores investment treaty arbitration through the Argentinean crisis in 2001. Through this lens, the author explains in detail investment treaty arbitration, the allocation of authority during these arbitrations, and the public-private division of investment treaty arbitration.

{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L
{136} ECONOMIC ADVANTAGES OF ADR

Valentina Vadi, *Energy Security v. Public Health? Nuclear Energy in International Investment Law and Arbitration*, 47 GEO. J. INT'L L. 1069 (2016).

This article analyzes the "clash" between energy security and public safety via foreign investments into nuclear power. It discusses various arbitration results that led to widespread grassroots opposition to nuclear power in Germany and the use of arbitration to resolve disputes over nuclear power. Also, it highlights certain issues that may present themselves during nuclear power arbitration.

{44} ARBITRATION – GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Nancy A. Welsh, *Magistrate Judges and the Transformation of the Federal Judiciary: Magistrate Judges, Settlement, and Procedural Justice*, 16 NEV. L.J. 983 (2016).

This article discusses magistrate judges' roles in settlement and ADR processes. It discusses the role of case management and efficiency in ADR referrals and questions whether judge-facilitated settlements are coercive. The article argues that mediation could have different results based on the identity of the mediator as the magistrate judge, due to lawyers' and parties' perceptions of procedural fairness.

{21} MEDIATION – GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL

Abraham L. Wickelgren, *An Economic Analysis of Arbitration Versus Litigation for Contractual Disputes*, 59 J. LAW & ECON. 393 (2016).

This article considers the efficiency of arbitration based on firm bias in the arbitration process consumer observation of this bias. The article then compares the firm's incentive to include an arbitration clause with the social incentive, and finds that the firm's incentive does not mirror the socially optimal incentive. Although the firm could have either an excessive or insufficient incentive to include an arbitration clause, this

article suggests that under fairly broad conditions the firm will not choose an arbitration clause when court adjudication would be more efficient.

{44} ARIBITRATION – GENERAL
{73} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Alice Wooley, *Hard Questions and Innocent Clients: The Normative Framework of the Three Hardest Questions, and the Plea Bargaining Problem*, 44 Ho□□TRA L. REV. 1179, (2016).

This article applies Monroe Freedman's classic analysis of hard questions to the obligations of defense lawyers during plea bargains. The author argues that such hard questions often arise in the plea bargaining scenario, and that the best choice for a defense lawyer faced with such hard questions is to create the best possible result for a client, even if it means participating in an injustice, or pushing the client to a particular choice.

{1} NEGOTIATION – GENERAL
{82} SUBJ MATTER: CRIMINAL
{138} ETHICS - GENERAL

Jarrod Wong, BG Group v. Republic of Argentina*: A Supreme Misunderstanding of Investment Treaty Arbitration*, 43 PEPP. L REV. 541, (2016).

This article discusses the outcome of *BG Group v. Republic of Argentina*, where a divided U.S. Supreme Court determined the standard of review of an investment treaty award. The Court held that because of the requirement in the U.K.-Argentina Bilateral Investment Treaty (BIT) that the investor must first litigate its dispute in national court was a procedural prerequisite to investor-state arbitration, rather than a substantive condition to the treaty itself, U.S. courts could not review *de novo* the jurisdictional basis of the resulting arbitral award but instead had to accord the award appropriate deference.

{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L
{149} QUALITY CONTROL

Nicole Wredberg, Note, *Subverting Workers' Rights: Class Action Waivers and the Arbitral Threat to the NLRA*, 67 HASTINGS L.J. 881 (2016).

The author discusses the increase in the use of arbitration agreement that include class and collective action waivers. This article argues that class actions are in line with Congress's purpose behind the National Labor Relations Act (NLRA) in balancing the power between employer and employee. The author argues that using a narrow interpretation of NLRA § 7 subverts the purpose of the NLRA and leaves unprotected employees to the power of employers.

{44} ARBITRATION – GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)
{102} SUBJ MATTER: PUBLIC POLICY
{147} POWER IMBALANCE

Lorri A. Yasenik & Jon M. Graham, *Hearing the Voice of the Child: The Continuum of Including Children in ADR Processes: A Child-Centered Continuum Model*, 54 FAM. CT. REV. 186 (2016).

This article introduces a four-level Child-Centered Continuum Model as a skills-based framework to increase the likelihood that children are considered in mediation and ADR processes. The article looks at children as parties to these proceedings and active participants in the family, rather than as objects of family matters.

{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES